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15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE DISTRICT OF NEVADA
17

18
19 UNITED STATES OF AMERICA
20 and
21 NEVADA DIVISION OF
22 ENVIRONMENTAL PROTECTION,
23 Plaintiffs,
24 v.
25 NEVADA POWER COMPANY,
26 Defendant.

Case No. _____

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CONSENT DECREE

Concurrently with the lodging of this Consent Decree, Plaintiffs United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), and State of Nevada, on behalf of the Nevada Department of Conservation and Natural Resources, Nevada Division of Environmental Protection ("NDEP"), have filed a Complaint in this action pursuant to Sections 113 and 304, respectively, of the Clean Air Act (the "Act"), 42 U.S.C. §§ 7413 and 7604, alleging that Defendant Nevada Power Company ("Defendant" or "NPC") violated the Act at its Reid Gardner Generating Station coal-fired power plant located near Moapa, Nevada (the "Facility").

The Complaint alleges that NPC regularly exceeded the twenty percent opacity limit and the associated record keeping and reporting requirements at all four coal-fired electric generating units ("EGU's") at the Facility, in violation of the Nevada Administrative Code § 445.721 of the SIP. Moreover, the Complaint alleges that NPC violated the monitoring, record keeping, and reporting requirements of its Operating Permit, and as set forth in the fifty-six Notices of Alleged Violation issued by NDEP (Docket Numbers 1862 through 1907 and 1942 through 1951) and a Notice of Violation issued by EPA R9-06-10.

NPC denies any liability to the United States or the State of Nevada arising out of the transactions or occurrences alleged in the Complaint, and maintains that it has been and remains in compliance with all applicable statutes, regulations and permits and is not liable for civil penalties and injunctive relief as alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

1 I. JURISDICTION AND VENUE

2 1. This Court has jurisdiction over the subject matter of this action, pursuant to 28
3 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and over
4 the Parties. Venue lies in this District pursuant to 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b)
5 and (c) and 1395(a), because the violations alleged in the Complaint occurred in, and NPC
6 conducts business in, this judicial District. Solely for purposes of entering and enforcing this
7 Decree under the terms herein, NPC consents to the Court's jurisdiction and venue in this judicial
8 District.

9 2. Solely for purposes of entering and enforcing this Consent Decree under the terms
10 herein, NPC agrees that the Complaint states claims upon which relief may be granted pursuant to
11 Section 113(b) of the Act.

12 3. Notice of the commencement of this action has been given to the State of Nevada,
13 as required by Section 113(b) of the Act.

14 4. On December 2, 2004, and July 19, 2005, NDEP issued a total of fifty-six Notices
15 of Alleged Violation to NPC, consisting of docket numbers 1862 through 1907 and 1942 through
16 1951.

17 5. EPA issued a Notice of Violation to NPC, docket number R9-06-10, dated June
18 21, 2006.

19 II. APPLICABILITY

20 6. The obligations of this Consent Decree apply to and are binding upon the United
21 States, the State of Nevada, and upon NPC and its successors or assigns.

22 7. Any transfer of ownership or operation of the Facility to any other person must be
23 conditioned upon the transferee's agreement: (i) to subject itself to the jurisdiction of this Court
24 as the defendant in this Consent Decree, and (ii) to perform all remaining obligations of NPC
25 required by this Decree, as provided in a written agreement between NPC and the proposed
26 transferee, enforceable by the United States and/or State of Nevada as third-party beneficiaries of
27 such agreement. At least 30 days prior to such transfer, NPC shall provide a copy of this Consent
28 Decree to the proposed transferee. At least 15 days prior to such transfer, NPC shall provide

1 written notice of the prospective transfer, together with a copy of the proposed written agreement,
2 to the Plaintiffs, pursuant to Section XV (Notices) of this Decree. If NPC attempts to transfer
3 ownership or operation of the Facility without complying with this Paragraph, it shall constitute a
4 violation of this Paragraph. NPC shall remain obligated to ensure that the terms of the Decree are
5 implemented until: (i) Defendant has paid the civil penalty as required by Section IV (Civil
6 Penalty); (ii) with respect to operations by NPC prior to transfer of ownership or operation of the
7 Facility, Defendant has either paid any accrued stipulated penalties owed to the United States and
8 State of Nevada pursuant to Section IX (Stipulated Penalties) or any disputes relating to stipulated
9 penalties have been resolved pursuant to Section XI (Dispute Resolution); and (iii) the transferee
10 is substituted by the Court as a defendant under this Decree.

11 8. NPC shall provide a copy of this Consent Decree to all officers and employees
12 whose primary duties include compliance with any provision of this Decree, as well as to any
13 entity retained to perform on-site compliance requirements found in Section V of this Consent
14 Decree. NPC shall include the provisions of Appendix A in any such contract.

15 9. In any action to enforce this Consent Decree, NPC shall not raise as a defense the
16 failure by any of its officers, directors, employees, agents, or contractors to take any actions
17 necessary to comply with the provisions of this Consent Decree.

18 III. DEFINITIONS

19 10. Terms used in this Consent Decree that are defined in the Act or in regulations
20 promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such
21 regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are
22 used in this Consent Decree, the following definitions shall apply:

23 a. "2006 dollars" shall mean the value of a cost incurred, or benefit accrued,
24 in future years, converted to 2006 dollars using the Consumer Price Index. This value shall be
25 calculated using the following equation, where 20XX is the year in which the money is expended
26 by the NPC, or the benefit is accrued, and "CPI" is the Consumer Price Index, as reported by the
27 United States Bureau of Labor Statistics:

28 2006 CPI

1 ----- X cost incurred (or benefit accrued) in year 20XX = "2006 Dollars"
2 20XX CPI

3 b. "Baghouse" shall mean a pollution control device designed to reduce
4 emissions of particulate matter from the Facility's boiler exhaust through the use of filter bags;

5 c. "CCDAQM" shall mean the Clark County Department of Air Quality
6 Management, located in Clark County, Nevada;

7 d. "CCSD" shall mean the Clark County School District, located in Clark
8 County, Nevada;

9 e. "Commence Construction" is defined in 40 C.F.R. § 51.165(a)(1)(xvi);

10 f. "Complaint" shall mean the Complaint filed by the United States and State
11 of Nevada in this action;

12 g. "Consent Decree" or "Decree" shall mean this Decree and Appendices A -
13 C attached hereto;

14 h. "Day" shall mean a calendar day unless expressly stated to be a working
15 day. In computing any period of time under this Consent Decree, where the last day would fall
16 on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the
17 next working day;

18 i. "Defendant" shall mean Nevada Power Company;

19 j. "ERC" shall mean Emission Reduction Credit;

20 k. "EGU" shall mean an electric generating unit at the Facility;

21 l. "EPA" shall mean the United States Environmental Protection Agency and
22 any of its successor departments or agencies;

23 m. "Facility" shall mean NPC's Reid Gardner Generating Station located near
24 Moapa, Nevada;

25 n. "Integrated Resource Plan" shall mean the same as that term is defined in
26 NAC § 704.9156;

27 o. "NDEP" shall mean the Nevada Division of Environmental Protection,
28 located in Carson City, Nevada;

1 p. “Opacity Compliance Period” shall begin upon the Effective Date of this
2 Decree and terminate thirty-six months after the Effective Date of this Decree, or upon the date
3 the baghouses for Units 1-3 begin operation pursuant to Paragraph 16, or upon decommissioning
4 of Units 1-3, pursuant to Paragraph 16(b), whichever is sooner.

5 q. “Opacity Exceedance” shall mean any 6 minute block opacity average as
6 determined by the continuous opacity monitors (COMS) for Units 1-4, which is greater than 20
7 percent, except those exceedances which are exempted due to water vapor interference from
8 uncombined water, as provided for by the SIP, NAC § 445B.22017(2);

9 r. “Operating Permit” shall mean the Facility’s Class I Air Quality Operating
10 Permit No. AP4911-0897, required for operation of the Facility under Title V of the Clean Air
11 Act, 42 U.S.C. §§ 7661-7661f, and is the same permit required pursuant to Title 40 Nevada
12 Revised Statutes Chapter 445B, et seq.;

13 s. “Plaintiffs” shall mean the United States and the State of Nevada;

14 t. “PUCN” shall mean the Public Utilities Commission of Nevada;

15 u. “Nevada” or “State of Nevada” shall mean the State of Nevada on behalf of
16 the Department of Conservation and Natural Resources, Division of Environmental Protection;

17 v. “NO_x” shall mean the sum of oxides of nitrogen in the flue gas, collectively
18 expressed as NO₂;

19 w. “Paragraph” shall mean a portion of this Decree identified by an Arabic
20 numeral;

21 x. “Parties” shall mean the United States, State of Nevada and Defendant;

22 y. “ROFA Project” shall mean NPC’s installation of a rotating opposed-fire
23 air system in Unit 4. The ROFA Project is being undertaken by NPC for reasons other than
24 compliance with the Operating Permit and is not otherwise required by law.

25 z. “Section” shall mean a portion of this Decree identified by a Roman
26 numeral;

27 aa. “SIP” shall mean the Nevada State Implementation Plan, approved by EPA
28 pursuant to section 110 of the Clean Air Act;

1 instructions to be provided to NPC by the Financial Litigation Unit of the U.S. Attorney's Office
2 for the District of Nevada. At the time of payment, NPC shall simultaneously send written notice
3 of payment and a copy of any transmittal documentation (which should reference DOJ case
4 number 90-5-2-1-08653 and the civil action number of this case) to the United States in
5 accordance with Section XVI (Notices) of this Decree.

6 b. Payment of \$770,000.00, plus 70% of accrued shall be made by cashier's
7 check, made payable to the "State of Nevada – Account for Management of Air Quality," and
8 sent via registered, certified or overnight mail to:

9 Mike Elges
10 Chief, Bureau of Air Pollution Control
11 Nevada Division of Environmental Protection
12 901 S. Stewart Street, Suite 4001
13 Carson City, NV 89701

14 At the time of payment, NPC shall simultaneously send written notice of payment and a copy of
15 any transmittal documentation to the State of Nevada in accordance with Section XVI (Notices)
16 of this Decree.

17 12. If the NPC fails to make timely payment to the United States of the civil penalty
18 set forth in Section IV. Paragraph 11(a), above, it shall be liable to the United States for interest
19 on the late payment as provided for at 28 U.S.C. § 1961. If NPC fails to make timely payment to
20 the State of Nevada of the civil penalty set forth in Section IV. Paragraph 11(b), above, it shall be
21 liable to Nevada for interest on the late payment at the same rate as required by 28 U.S.C. § 1961.
22 If NPC fails to make timely payment to either of the Plaintiffs, it shall also be liable for stipulated
23 penalties, as set forth in Section IX (Stipulated Penalties).

24 13. Any payment made pursuant to Section IV (Civil Penalty) of this Consent Decree
25 is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C.
26 § 162(f), and is not a tax deductible expenditure for purposes of federal, state, or local law.
27 Neither NPC nor any of its parent or affiliated corporations shall deduct NPC's payment of the
28 civil penalty provided for herein for any tax purpose or otherwise obtain favorable tax treatment
of such civil penalty payment.

1 V. COMPLIANCE REQUIREMENTS

2 14. In order to prevent opacity emission violations, as well as other violations at the
3 Facility as identified in the Complaint, NPC shall comply with the requirements of this Section.

4 15. Igniter Installation Project. NPC shall replace the fuel oil igniters for Units 1-4 at
5 the Facility by installing natural gas igniters in Units 1-4; replace the Burner Management System
6 for Units 1-4 as necessary to operate natural gas igniters; construct a natural gas pipeline
7 connecting the Facility to the Kern River Natural Gas Pipeline; and undertake any other
8 modifications at the Facility necessary to operate natural gas igniters in Units 1-4.

9 a. NPC shall complete construction of the Igniter Installation Project required
10 by this Paragraph no later than twenty-four months (24) after the Effective Date of this Decree.
11 Beginning twenty-four (24) months after the Effective Date of this Decree NPC shall not use oil
12 for start-up or flame stabilization of any EGU at the facility.

13 16. Installation and Operation of Baghouses. By no later than thirty-six (36) months
14 after the Effective Date of this Decree NPC shall complete construction and begin operating three
15 separate Baghouses at the Facility, for Units 1, 2, and 3, respectively.

16 a. If construction of any one of the three Baghouses is not completed by
17 within thirty-six (36) months after the Effective Date of this Decree NPC may, in its discretion,
18 shut down and cease the operation of any one of the Units not operating a Baghouse at the
19 Facility. NPC may, at its discretion, recommence operation of a Unit shutdown pursuant to this
20 paragraph, provided that construction of a baghouse for the Unit is complete and the baghouse is
21 operational.

22 b. If NPC does not receive approval from the PUCN for the installation and
23 operation of the Baghouses for Units 1-3 in its Integrated Resource Plan, NPC may, in its sole
24 discretion, choose to decommission Units 1-3. If NPC chooses to decommission Units 1-3
25 pursuant to this Paragraph, the following shall apply:

26 i. NPC shall notify the EPA and NDEP in writing, pursuant to Section
27 XVI (Notices), that it intends to decommission Units 1-3 no later than November 30, 2007, or
28

1 within one year of the PUCN decision on NPC's Integrated Resource Plan, whichever is sooner;
2 and

3 ii. NPC shall shut down and permanently cease operation of Units 1-3
4 on or before November 30, 2008.

5 17. Monitoring, Recordkeeping, and Reporting. NPC shall comply with the
6 monitoring, recordkeeping, and reporting requirements set forth in the Operating Permit.

7 VI. ENVIRONMENTAL MANAGEMENT AND AUDITING

8 18. NPC shall implement an Environmental Compliance Plan at the Facility, and
9 conduct audits in accordance with the Plan at the Facility, as further specified in this Section.
10 Violations disclosed in the audits required by Section VI shall be deemed to meet the "voluntary
11 discovery" condition of EPA's policy entitled "Incentives for Self-Policing: Discovery,
12 Disclosure, Correction and Prevention of Violations" (65 Fed. Reg. 19,618, April 11, 2000).

13 19. Implementation of Environmental Compliance Plan. No later than 10 days after
14 the Effective Date of this Decree, NPC shall implement the Environmental Compliance Plan,
15 attached in Appendix B, at the Facility, setting forth policies, procedures, and controls to assure
16 ongoing compliance with its Operating Permit and any other applicable requirements pursuant to
17 the Act and SIP.

18 a. The Environmental Compliance Plan required by Paragraph 18, and
19 attached in Appendix B, shall be materially modified after consultation and agreement between
20 the Parties. A material modification does not include changes in NPC personnel, outside
21 contractors used by NPC or software systems described in the Environmental Compliance Plan.
22 If a modification to the Environmental Compliance Plan is agreed upon by all of the Parties, NPC
23 shall provide a copy of the modified Plan to NDEP and EPA, as required pursuant to Section XVI
24 (Notices).

25 20. Title V Air Quality Operating Permit Audits. No later than 6 months after the
26 Effective Date of this Decree, NPC shall complete its initial audit of its compliance with its Title
27 V Air Quality Operating Permit, as specified in Section 14 of its Environmental Compliance Plan,
28 attached in Appendix B. This initial audit will be the first of a series of four Title V compliance

1 audits conducted at the Facility. Each one of the four audits will focus only on one of the
2 following aspects of the Operating Permit and the associated state and federal regulations: (1)
3 monitoring, reporting and record-keeping; (2) continuous emission monitoring system (CEMS)
4 and continuance opacity monitoring system (COMS) operation, maintenance and software; (3)
5 emission exceedances; and, (4) an internal audit of overall environmental compliance
6 management. All four of these audits shall be completed within 18 months after the Effective
7 Date of this Decree. The audits shall be memorialized by final written reports provided to EPA
8 and NDEP within 10 days of completion of each audit.

9 a. NPC shall select a third-party auditor to conduct the audits required by this
10 Paragraph, with the exception of the overall environmental compliance management audit, which
11 will be done internally. The third-party auditors shall: (i) have expertise and competence in the
12 applicable environmental requirements; (ii) the lead auditor shall have at least attained a
13 bachelor's degree at an accredited institution; (iii) not be an employee or former employee of
14 NPC, nor its parent or affiliated corporations; (iv) not own any stock in NPC, or in any parent or
15 affiliated corporations, nor have a financial stake in the outcome of the audits required under this
16 Section of the Decree; and (v) be capable of exercising independent judgment and discipline. If
17 NPC, or any parent or affiliated corporation, has had a previous contractual relationship with the
18 auditor selected under this Paragraph, NPC shall disclose to EPA and NDEP, pursuant to Section
19 XVI (Notices), the nature of the previous contractual relationships.

20 b. Within 90 days of the Effective Date of this Decree, NPC shall submit, in
21 writing, to EPA and NDEP, pursuant to Section XVI (Notices): (i) the name, affiliation, and
22 address of the auditors selected by NPC to conduct the audits required by this Section; and (ii)
23 documentation demonstrating that the auditors satisfy the requirements of Paragraph 20(a). If the
24 Plaintiffs determine that the proposed auditor does not meet the qualifications set forth in
25 Paragraph 20(a), or that a past or existing relationship with the auditor would affect the auditor's
26 ability to exercise the independent judgment and discipline required to conduct the audit, the
27 Plaintiffs reserve the right to disapprove of the auditor within 25 days after EPA and NDEP have
28 both received the notice of the proposed auditor from NPC pursuant to this Paragraph, and

1 another auditor shall be proposed by NPC for approval within 30 days of NPC's receipt of the
2 disapproval.

3 c. If, at any time, NPC wishes to hire a new auditor, NPC shall notify the
4 EPA and NDEP in writing, pursuant to Section XVI (Notices), with an explanation for the
5 change. Any subsequent auditor must satisfy the qualification requirements of Paragraph 20(a).
6 The procedural requirements in Paragraph 20(b) shall apply to the selection of a new auditor.

7 21. Each submission required under this Section shall be signed by an official with
8 knowledge of the auditing process at the Facility and shall bear the certification language set forth
9 in Paragraph 40, below. Any submission made by NPC will not be complete for purposes of
10 meeting the deadlines specified by this Section, unless it meets the requirements of this
11 Paragraph.

12 VII. ENVIRONMENTAL PROJECTS

13 22. NOx Emission Reduction Credit Donation Project. No later than six months after
14 the Effective Date of this Decree, NPC shall apply to CCAQMD for NOx ERCs associated with
15 the ROFA Project. NPC shall reduce any application to CCAQMD for NOx ERCs generated by
16 the ROFA Project by 282 tons per year of NOx ERCs, or 30 percent, whichever is greater, of the
17 decrease in NOx emissions to be achieved by the ROFA Project calculated using a two year
18 average baseline, consisting of Unit 4 NOx acid rain data from a period between 2001 and 2005,
19 pursuant to CCAQMD regulations. This reduction shall not be used by NPC in any other
20 application for ERCs, or for netting or determining contemporaneous decreases for New Source
21 Review (NSR) and/or Prevention of Significant Deterioration (PSD) Program purposes. NPC's
22 ROFA Project is for reasons other than compliance with the Operating Permit.

23 a. Within ten days of submitting any NOx ERC application to CCDAQM,
24 NPC shall provide a copy of the application to EPA and NDEP, pursuant to Section XVI
25 (Notices) of this Consent Decree.

26 b. If the ROFA Project does not achieve a NOx reduction of at least 282 tons
27 per year on or before two years after the Effective Date of this Decree, NPC shall pay to the
28 United States, pursuant to Paragraph 54, an amount determined by the following formula:

1 (280 – [Actual NOx Reduction in tons per year achieved by ROFA Project]) × \$10,639

2 23. SO₂ Limitations and Operating Permit Modification.

3 a. Beginning on the Effective Date of this Decree, measured separately, Units
4 1, 2 and 3 shall not have SO₂ emissions in excess of .40 LB/MMBtu, based on a 10 day rolling
5 average period.

6 b. Compliance with the SO₂ emission limitations in this Paragraph shall be
7 demonstrated with SO₂ CEMS and the procedures established in the appropriate section of NPC's
8 Operating Permit.

9 c. In accord with Section XII (Permits), NPC shall modify its Operating
10 Permit to include the SO₂ emissions limitations required by this Paragraph.

11 24. Energy Savings Project for Clark County School District. NPC shall perform
12 projects for the Clark County School District that will result in reducing the amount of energy
13 consumed by CCSD's facilities. These projects will result in a quantifiable and verifiable annual
14 energy bill savings of over \$500,000, and cumulative energy bill savings in excess of \$4 million,
15 in 2006 Dollars, to CCSD no later than seven years after the Effective Date of this Decree.

16 25. Clark County School District Energy Savings Project Completion Report. No later
17 than July 30, 2014, Defendant shall submit a Completion Report to NDEP, pursuant to Section
18 XVI (Notices). The Completion Report shall contain the information required below, in
19 Paragraph 25 (a)-(f). NPC shall use reasonable efforts to collect any information from third-
20 parties, including CCSD, necessary for the Completion Report.

21 a. a detailed description of the CCSD Energy Savings Project as implemented
22 since the Effective Date of the Decree;

23 b. a description of any problems encountered in completing the CCSD Energy
24 Project and the solutions thereto;

25 c. a detailed analysis of the energy savings achieved by the project, presented
26 both in terms of (i) avoided Kwhs and/or decatherms of natural gas, and (ii) cost savings,
27 cumulatively and annually, to the CCSD in 2006 Dollars. This analysis will reference the
28 following measurement and verification protocols: International Performance Measurement and

1 Verification Protocol; the Measurement and Verification Guidelines for Federal Energy Projects
2 (Federal Energy Management Program, U.S. Department of Energy); and the American Society
3 of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) Guidelines on
4 Measuring Energy and Demand Savings;

5 d. a detailed analysis of CCSD's projected energy annual energy savings in
6 2006 Dollars expected due to the project, using the following measurement and verification
7 protocols: International Performance Measurement and Verification Protocol; the Measurement
8 and Verification Guidelines for Federal Energy Projects; and the ASHRAE Guidelines on
9 Measuring Energy and Demand Savings;

10 e. certification that the CCSD Energy Savings Project has been fully
11 implemented pursuant to the provisions of this Decree, and has resulted in both cumulative cost
12 savings and projected annual cost savings to CCSD, required by Paragraph 24; and

13 f. a description of the environmental and public health benefits resulting from
14 implementation of the project (with a quantification of the benefits and pollutant reductions, if
15 feasible).

16 26. Within 30 days of its receipt of the Completion Report pursuant to Paragraph 25,
17 NDEP may request additional information from NPC, in addition to that described in Paragraph
18 25, if necessary to determine the adequacy of the completion of the CCSD Energy Savings
19 Project and/or to evaluate the economic benefit of the project to CCSD. NPC shall respond to a
20 request from NDEP pursuant to this Paragraph within 90 days, and shall use reasonable efforts to
21 collect any information necessary to respond to NDEP's inquiry.

22 27. If the project has not been satisfactorily completed in accordance with the
23 requirements of this Consent Decree, or if the cumulative and annual energy savings realized by
24 CCSD as a result of NPC's project are less than the amounts required by Paragraph 24, above, the
25 State of Nevada may assess Stipulated Penalties pursuant to Paragraph 50.

26 28. With regard to the environmental projects required by this Section, NPC certifies
27 the truth and accuracy, to its knowledge, of each of the following:
28

1 a. that all cost information provided to the Plaintiffs in connection with the
2 Plaintiffs' approval of the environmental projects in this Decree is complete and accurate and
3 represents a fair estimate of the costs necessary to implement the projects;

4 b. that, as of the date of executing this Decree, NPC is not required to perform
5 or develop the environmental projects by any federal, State, or local law or regulation and is not
6 required to perform or develop the projects by agreement, grant, or as injunctive relief awarded in
7 any other action in any forum;

8 c. that NPC has not received, and is not negotiating to receive, credit for the
9 environmental projects in any other enforcement action; and

10 d. that NPC may finance and pay for the environmental projects as allowed
11 under Nevada law as a regulated utility, but will not receive any reimbursement for any portion of
12 the environmental projects from any unrelated third-party, governmental grant, foundation or
13 charitable organization.

14 29. Disputes concerning the satisfactory performance of the environmental projects
15 required by this Section may be resolved under Section XI (Dispute Resolution) of this Decree.

16 30. Each submission required under this Section shall be signed by an official with
17 knowledge of the environmental project and shall bear the certification language set forth in
18 Paragraph 40, below.

19 31. Any official public statement, oral or written, in print, film, or other media, made
20 by NPC, or its parent or affiliated corporations, making reference to the environmental projects
21 required under this Section shall include the following language: "This project was required by
22 the terms of a Consent Decree entered into with the State of Nevada and the U.S. Environmental
23 Protection."

24 32. Neither NPC nor any of its parent or affiliated corporations shall deduct the costs
25 associated with the environmental projects required by this Section for any tax purpose, or
26 otherwise obtain favorable tax treatment of such costs.

1 VIII. REPORTING REQUIREMENTS

2 33. By no later than 180 days after the Effective Date of this Consent Decree, and
3 every 180 days thereafter, until 180 days after NPC has completed all construction required by
4 Paragraphs 15 (Igniter Installation Project) and 16 (Installation and Operation of Baghouses),
5 NPC shall submit to EPA and NDEP, pursuant to Section XVI (Notices), a report which provides
6 the following for the 180 day period that ended on the reporting date:

7 a. A status report regarding all work necessary to meet the requirements of
8 Paragraphs 15 (Igniter Installation Project) and 16 (Installation and Operation of Baghouses).
9 This status report shall include, at a minimum, a discussion of the status of any construction or
10 compliance measures (e.g., permitting process, contracting for construction, engineering, or other
11 related activities, anticipated start-up of operations, testing, etc.); problems encountered or
12 anticipated with construction or permitting, together with implemented or proposed solutions; and
13 copies of any documentation provided to, or received from, NDEP, CCDAQM and/or any other
14 permitting agencies, regarding any requirement imposed by this Decree; and

15 b. A current copy of the Environmental Compliance Plan, required pursuant
16 to Paragraph 18, including a summary of any changes made to the plan since the previous report.

17 34. NPC shall not claim confidential treatment under, EPA, US Department of Justice,
18 or State regulations for any information disclosed in the audits required pursuant to Paragraph 20,
19 unless that information consists of trade secrets, or proprietary commercial information. If NPC
20 seeks to claim as confidential such information disclosed in an audit report, NPC shall highlight
21 that information wherever it appears, and that claim shall be subject to EPA regulations under 40
22 C.F.R. Part 2. Nothing in this paragraph shall prevent the Plaintiffs from submitting information
23 containing alleged trade secrets to the Court under seal.

24 35. Within 60 days of the completion of an audit, as required by Section VI
25 (Environmental Management and Auditing), NPC shall provide EPA and NDEP, pursuant to
26 Section XVI (Notices), a report of any corrective action NPC is undertaking in response to the
27 audit report.

1 36. On an annual basis, beginning two years after the Effective Date of this Consent
2 Decree, and continuing until June 30, 2014, NPC shall provide a report containing the following
3 information:

4 a. a description of the CCSO Energy Savings Project as implemented during
5 the previous year;

6 b. a description of any problems encountered in undertaking the CCSO
7 Energy Project in the previous year and the solutions thereto; and

8 c. a detailed analysis of the energy savings achieved to date by the project,
9 presented both in terms of (i) avoided KwHs and/or decatherms of natural gas, and (ii) cost
10 savings, cumulatively and annually, to the CCSO in 2006 dollars. This analysis will reference the
11 following measurement and verification protocols: International Performance Measurement and
12 Verification Protocol; the Measurement and Verification Guidelines for Federal Energy Projects;
13 and the ASHRAE Guidelines on Measuring Energy and Demand Savings.

14 37. Opacity Exceedance Reporting. Within 10 days of submitting any required
15 quarterly report concerning opacity emissions to the Director of the State Department of
16 Conservation and Natural Resources, or his designee, pursuant to Nevada Administrative Code
17 § 445B.265 (Monitoring systems: Records; Reports), NPC shall provide EPA with a copy of the
18 report, pursuant to Section XVI (Notices).

19 a. If NPC shuts down and ceases operations of Units 1-3, pursuant to
20 Paragraph 16, it shall not be required to provide EPA with copies of the quarterly reports pursuant
21 to this Paragraph. However, if NPC later recommences operation of any shutdown Unit, pursuant
22 to Paragraph 16(a), it shall provide EPA with copies of the quarterly reports, as required by this
23 Paragraph.

24 38. NPC shall notify the Plaintiffs in writing, within 15 days of the day NPC first
25 becomes aware of a violation of any requirement of this Consent Decree, and shall identify its
26 likely duration, with an explanation of the violation's likely cause and of the remedial steps taken,
27 or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully
28 explained at the time the report is due, NPC shall so state in the report. NPC shall investigate the

1 cause of the violation and shall then submit an amendment to the report, including a full
2 explanation of the cause of the violation, within 45 days of the day NPC becomes aware of the
3 cause of the violation. Nothing in this Paragraph or the following Paragraph relieves NPC of its
4 obligation to provide the notice required by Section X (Force Majeure) of this Consent Decree.

5 39. All reports required by this Section shall be submitted as required by Section XVI
6 (Notices) of this Consent Decree.

7 40. Each report submitted by NPC under this Section shall be signed by a
8 knowledgeable officer of NPC under penalty of law that the information contained in the report is
9 true accurate, and complete to the best of his or her knowledge and belief, and shall include the
10 following certification:

11 I certify under penalty of law that I have examined and am familiar with the
12 information submitted in this document and all attachments and that, based on my
13 inquiry of those individuals immediately responsible for obtaining the information
14 and to the best of my knowledge, information and belief, the information is true,
15 accurate, and complete. I am aware that there are significant penalties for
16 submitting false information, including the possibility of fines and imprisonment.

17 41. The reporting requirements of this Consent Decree do not relieve NPC of any
18 reporting obligations required by the Act or implementing regulations, or by any other federal,
19 State, or local law, regulation, permit, or other requirement.

20 42. Any information provided pursuant to this Consent Decree may be used by the
21 Plaintiffs in any proceeding to enforce the provisions of this Consent Decree and as otherwise
22 permitted by law.

23 IX. STIPULATED PENALTIES

24 43. If NPC fails to pay the civil penalty to the United States, required to be paid under
25 Section IV (Civil Penalty) of this Decree when due, NPC shall pay a Stipulated Penalty of \$5,000
26 per day for each day that the payment is late to the United States. Late payment of the civil
27 penalty to the United States shall be made in accordance with Section IV (Civil Penalty),
28 Paragraph 11(a), above. Stipulated Penalties shall be paid in accordance with Section IX

1 (Stipulated Penalties), Paragraph 54, below. All transmittal correspondence shall state that any
2 such payment is for late payment of the civil penalty due to the United States under this Decree,
3 or for Stipulated Penalties for the late payment, as applicable, and shall include the identifying
4 information set forth in Paragraph 11(a), above.

5 44. If NPC fails to pay the civil penalty to the State of Nevada, required to be paid
6 under Section IV (Civil Penalty), Paragraph 11(b) of this Decree when due, NPC shall pay a
7 Stipulated Penalty of \$5,000 per day for each day that the payment is late to the State of Nevada.
8 Late payment of the civil penalty to the State of Nevada shall be made in accordance with Section
9 IV (Civil Penalty), Paragraph 11(b), above. Stipulated Penalties shall be paid in accordance with
10 Section IX (Stipulated Penalties), Paragraph 55, below. All transmittal correspondence shall state
11 that any such payment is for late payment of the civil penalty due to the State of Nevada under
12 this Decree, or for Stipulated Penalties for the late payment, as applicable, and shall include the
13 identifying information set forth in Paragraph 11(b), above.

14 45. NPC shall be liable for Stipulated Penalties to the United States and/or the State of
15 Nevada for violations of this Consent Decree as specified below, unless excused under Section X
16 (Force Majeure). A violation includes failing to perform any obligation required by the terms of
17 this Decree, including any work plan or schedule approved under this Decree, according to all
18 applicable requirements of this Decree and within the specified time schedules established by or
19 approved under this Decree.

20 46. Opacity Emission Limits during Opacity Compliance Period. During the Opacity
21 Compliance Period, NPC shall pay stipulated penalties in accordance with Paragraphs 46(a) – (d)
22 for any Opacity Exceedance. Upon demand by either Plaintiff, stipulated penalties due under
23 Paragraphs 46(a) – (d) shall be paid fifty-percent to the United States, in accordance with
24 Paragraph 54, and fifty-percent to the State of Nevada, in accordance with Paragraph 55.

25 a. Unit #1. If the total of Opacity Exceedances over the previous 11 month
26 period exceeds 134, and the number of Opacity Exceedances for the current calendar month
27 exceeds 13, then NPC shall pay stipulated penalties for each additional Opacity Exceedance during
28 the current calendar month, as follows:

Monthly Opacity Exceedances (six minute averages):	<u>14-24</u>	<u>25-35</u>	<u>36+</u>	
Stipulated Penalty per six minute average over 7:	\$2,500	\$5,000	\$7,500	

b. Unit #2. If the total of opacity exceedances over the previous 11 month period exceeds 162, and the number of opacity exceedances for the current calendar month exceeds 15, then NPC shall pay stipulated penalties for each additional six minute exceedance during the current calendar month, as follows:

Monthly Opacity Exceedances (six minute averages):	<u>16-26</u>	<u>27-37</u>	<u>38+</u>	
Stipulated Penalty per six minute average over 15:	\$2,500	\$5,000	\$7,500	

c. Unit #3. If the total of opacity exceedances over the previous 11 month period exceeds 134, and the number of opacity exceedances for the current calendar month exceeds 13, then NPC shall pay stipulated penalties for each additional six minute exceedance during the current calendar month, as follows:

Monthly Opacity Exceedances (six minute averages):	<u>14-24</u>	<u>25-35</u>	<u>36+</u>	
Stipulated Penalty per six minute average over 13:	\$2,500	\$5,000	\$7,500	

d. Unit #4. If the total of opacity exceedances over the previous 11 month period exceeds 174, and the number of opacity exceedances for the current calendar month exceeds 15, then NPC shall pay stipulated penalties for each additional six minute exceedance during the current calendar month, as follows:

Monthly Opacity Exceedances (six minute averages):	<u>16-26</u>	<u>27-37</u>	<u>38+</u>	
Stipulated Penalty per six minute average over 15:	\$2,500	\$5,000	\$7,500	

47. Compliance Requirements Stipulated Penalties.

1 a. NPC shall pay a stipulated penalty of \$2,500, per day, for each violation of
2 any requirement in Paragraphs 7, 15, and/or 17 of this Consent Decree. Upon demand by either
3 Plaintiff, stipulated penalties due under this Paragraph shall be paid fifty-percent to the United
4 States, in accordance with Paragraph 54, and fifty-percent to the State of Nevada, in accordance
5 with Paragraph 55.

6 b. NPC shall pay a stipulated penalty of \$5,000, per day, for each violation of
7 any requirement in Paragraph 16 (Installation and Operation of Baghouses) of this Consent
8 Decree. Upon demand by either Plaintiff, stipulated penalties due under this Paragraph shall be
9 paid fifty-percent to the United States, in accordance with Paragraph 54, and fifty-percent to the
10 State of Nevada, in accordance with Paragraph 55.

11 48. Environmental Management and Auditing Stipulated Penalties. NPC shall pay a
12 stipulated penalty of \$1,500, per day, for each violation of any deadline in Section VI
13 (Environmental Management and Auditing). Upon demand by either Plaintiff, stipulated
14 penalties due under this Paragraph shall be paid fifty-percent to the United States, in accordance
15 with Paragraph 54, and fifty-percent to the State of Nevada, in accordance with Paragraph 55.

16 49. Reporting and Recordkeeping Requirements Stipulated Penalties. NPC shall pay a
17 stipulated penalty of \$1,000 per day, for each violation of the reporting and recordkeeping
18 requirements of Section VIII (Reporting Requirements) of this Consent Decree. Upon demand by
19 either Plaintiff, stipulated penalties due under this Paragraph shall be paid fifty-percent to the
20 United States, in accordance with Paragraph 54, and fifty-percent to the State of Nevada, in
21 accordance with Paragraph 55.

22 50. Environmental Project Compliance Stipulated Penalties.

23 a. NPC shall pay a stipulated penalty of \$2,500, per day, for any failure to
24 make its application to CCAQMD as required by Paragraph 22 and/or each to provide a copy of
25 such application to NDEP and EPA, as required by Paragraph 22(a). Upon demand by either
26 Plaintiff, stipulated penalties due under this Paragraph shall be paid fifty-percent to the United
27 States, in accordance with Paragraph 54, and fifty-percent to the State of Nevada, in accordance
28 with Paragraph 55.

1 b. NPC shall pay a stipulated penalty of \$10,000, per day, for each violation
2 of the 10 day rolling average requirements in Paragraph 23 (SO₂ Limitations and Operating
3 Permit Modification). Upon demand by either Plaintiff, stipulated penalties due under this
4 Paragraph shall be paid fifty-percent to the United States, in accordance with Paragraph 54, and
5 fifty-percent to the State of Nevada, in accordance with Paragraph 55.

6 c. If the total cumulative cost savings to CCSD pursuant to Paragraph 24 are
7 less than \$4,000,000, in 2006 Dollars, NPC shall pay the State of Nevada a stipulated penalty of
8 the difference between the total cumulative cost savings as determined pursuant to Paragraph
9 25(c) and \$4,000,000, in accordance with Paragraph 55.

10 d. NPC shall pay the State of Nevada a stipulated penalty of \$500, per day,
11 for each violation of the reporting requirements of Paragraph 25 (CCSD Energy Saving Project
12 Completion Report) of this Consent Decree, in accordance with Paragraph 55.

13 e. NPC shall pay a stipulated penalty of \$1,000 for each violation of the
14 requirements in Paragraph 30. Upon demand by either Plaintiff, stipulated penalties due under
15 this Paragraph shall be paid fifty-percent to the United States, in accordance with Paragraph 54,
16 and fifty-percent to the State of Nevada, in accordance with Paragraph 55.

17 f. NPC shall pay a stipulated penalty of \$2,500 for each violation of the
18 requirements in Paragraph 31. Upon demand by either Plaintiff, stipulated penalties due under
19 this Paragraph shall be paid fifty-percent to the United States, in accordance with Paragraph 54,
20 and fifty-percent to the State of Nevada, in accordance with Paragraph 55.

21 51. Stipulated Penalties under this Section shall begin to accrue on the day after
22 performance is due or on the day a violation occurs, whichever is applicable, and shall continue to
23 accrue until performance is satisfactorily completed or until the violation ceases. Stipulated
24 Penalties shall accrue simultaneously for separate violations of this Consent Decree. NPC shall
25 pay any Stipulated Penalty within 30 days of receiving a written demand for payment from either
26 Plaintiff.

27 52. Either Plaintiff may, in the unreviewable exercise of its discretion, reduce or waive
28 Stipulated Penalties otherwise due it under this Consent Decree.

1 53. Except as otherwise provided by Paragraph 70, Stipulated Penalties shall continue
2 to accrue as provided in Paragraph 51, above, during any Dispute Resolution, with interest on
3 accrued penalties payable and calculated at the rate established by the Secretary of the Treasury,
4 pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

5 a. If the dispute is resolved by agreement or by a decision of the United States
6 or State of Nevada, as applicable, that is not appealed to the Court, NPC shall pay accrued
7 penalties agreed upon or determined to be owing, together with interest, to the United States or
8 State of Nevada within 30 days of the Effective Date of the agreement or the receipt of the United
9 States' or State of Nevada's decision or order.

10 b. If the dispute is appealed to the Court and the United States or Nevada
11 prevail in whole or in part, NPC shall pay all accrued penalties and interest determined by the
12 Court to be owing, within 60 days of receiving the Court's decision or order, except as provided
13 in Subparagraph c, below.

14 c. If any Party appeals the District Court's decision, NPC shall pay all
15 accrued penalties and interest determined to be owing by the appellate court, within 15 days of
16 receiving the final appellate court decision.

17 54. NPC shall pay Stipulated Penalties owing to the United States by EFT in
18 accordance with Section IV, Paragraph 11(a), above or by certified or cashier's check in the
19 amount due, payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-2-1-08653,
20 and delivered to:

21 United States Attorney's Office
22 District of Nevada
23 Attn: Financial Litigation Unit
24 333 South Las Vegas Blvd., Lloyd George Federal Bldg.
 Las Vegas, NV 89101

25 55. NPC shall pay Stipulated Penalties owing to the State of Nevada by cashier's
26 check, made payable to the "State of Nevada – Account for Management of Air Quality," and
27 sent via registered, certified, or overnight mail to:
28

1 Mike Elges
2 Chief, Bureau of Air Pollution Control
3 Nevada Division of Environmental Protection
4 901 S. Stewart Street, Suite 4001
5 Carson City, NV 89701

6 56. Neither NPC nor any of its parent or affiliated corporations shall deduct NPC's
7 payment of Stipulated Penalties paid under this Section for any tax purpose or otherwise obtain
8 favorable tax treatment of such payment.

9 57. If NPC fails to pay Stipulated Penalties according to the terms of this Consent
10 Decree, NPC shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961,
11 accruing as of the date payment became due.

12 58. Subject to the provisions of Section XIV (Effect of Settlement/Reservation of
13 Rights) of this Consent Decree, the Stipulated Penalties provided for in this Consent Decree shall
14 be in addition to any other rights, remedies, or sanctions available to the Plaintiffs for Defendant's
15 violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is
16 also a violation of the Act, NPC shall be allowed a credit, for any Stipulated Penalties paid,
17 against any statutory penalties imposed for such violation.

18 X. FORCE MAJEURE

19 59. For purposes of this Consent Decree, a "Force Majeure Event" is defined as any
20 event arising from causes beyond the control of NPC, its contractors, or any entity controlled by
21 NPC that delays or prevents the performance of any obligation under this Consent Decree despite
22 NPC's best efforts to fulfill the obligation. "Best efforts" include using best efforts to anticipate
23 any potential force majeure event and to address the effects of any such event (a) as it is occurring
24 and (b) after it has occurred, such that the delay is minimized to the greatest extent possible.
25 "Force Majeure" does not include NPC's financial inability to perform any obligation under this
26 Consent Decree, nor does it include normal inclement weather.

27 60. If any event occurs or has occurred that may delay the performance of any
28 obligation under this Consent Decree, as to which NPC intends to assert a claim of force majeure,
NPC shall provide notice in writing, as provided in Section XVI (Notices) of this Consent Decree,
within seven (7) days of the time NPC first knew of, or by the exercise of due diligence should

1 have know of, the event. Such notification shall include an explanation and description of the
2 reasons for the delay; the anticipated duration of the delay; a description of all actions taken or to
3 be taken to prevent or minimize the delay; a schedule for implementation of any measures to be
4 taken to prevent or mitigate the delay or the effect of the delay; and NPC's rationale for
5 attributing such delay to a Force Majeure Event. Failure to comply with the above requirements
6 shall preclude NPC from asserting any claim of Force Majeure. NPC shall be deemed to know of
7 any circumstance of which NPC, its contractors, or any entity controlled by NPC knew or should
8 have known.

9 61. NPC shall have the burden of proving, by a preponderance of the evidence, that
10 each event described in the preceding Paragraph was a Force Majeure Event; that NPC gave the
11 notice required by the preceding Paragraph; that NPC took all reasonable steps to prevent or
12 minimize any delay caused by the event; and that any period of delay it claims was attributable to
13 the Force Majeure Event was caused by that event.

14 62. If the Plaintiffs agree that a delay in NPC's performance of an obligation under
15 this Consent Decree has been caused by a Force Majeure Event, the Parties shall stipulate to an
16 extension of time for NPC's performance of the affected compliance requirement by a period not
17 exceeding the delay actually caused by such event. In such circumstances, the appropriate
18 modification shall be made pursuant to Section XIX (Modification) where the modification is to a
19 term of this Consent Decree or is a material modification of any Appendix to this Consent
20 Decree. In the event that the Parties cannot agree, the matter shall be resolved in accordance with
21 Section XI (Dispute Resolution). Any extension of time for the performance of the obligations
22 affected by a Force Majeure Event shall not, of itself, extend the time for performance of any
23 other obligation required by this Consent Decree.

24 XI. DISPUTE RESOLUTION

25 63. Unless otherwise expressly provided for in this Consent Decree, the dispute
26 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising
27 under or with respect to this Consent Decree. However, such procedures shall not apply to
28

1 actions by the United States or State of Nevada to enforce obligations of the Defendant that
2 Defendant has not disputed in accordance with this Section.

3 64. Informal Dispute Resolution. Any dispute subject to dispute resolution under this
4 Consent Decree shall first be the subject of informal negotiations. The dispute shall be
5 considered to have arisen when the Plaintiffs receive a written Notice of Dispute from Defendant.
6 Such Notice of Dispute shall state clearly the matter in dispute. The period of informal
7 negotiations shall not exceed 30 days from the date the Plaintiffs receive the Notice of Dispute,
8 unless that period is modified by written agreement. If the Parties cannot resolve a dispute by
9 informal negotiations, then the position advanced by the Plaintiffs shall be considered binding
10 unless, within 30 days after receiving written notice from the Plaintiffs terminating informal
11 negotiations, Defendant invokes formal dispute resolution procedures as set forth below.

12 65. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution
13 procedures, within the time period provided in the preceding Paragraph, by serving on the
14 Plaintiffs a written Statement of Position regarding the matter in dispute. The Statement of
15 Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion
16 supporting Defendant's position and any supporting documentation relied upon by Defendant.

17 66. The Plaintiffs shall serve their Statement of Position within 45 days of receipt of
18 Defendant's Statement of Position. EPA and NDEP will respond with one combined Statement
19 of Position, setting forth the position of both EPA and NDEP. The Plaintiffs' Statement of
20 Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion
21 supporting that position and any supporting documentation relied upon by the Plaintiffs. The
22 Plaintiffs' Statement of Position shall be binding on Defendant, unless Defendant files a motion
23 for judicial review of the dispute in accordance with the following Paragraph.

24 a. Plaintiffs shall maintain an administrative record of all disputes brought
25 under Paragraph 65. The administrative record shall include all Statements of Position, including
26 accompanying supporting information and documentation.

27 67. Defendant may seek judicial review of the dispute by filing with the Court and
28 serving on the Plaintiffs, in accordance with Section XVI (Notices) of this Consent Decree, a

1 motion requesting judicial resolution of the dispute. The motion must be filed within 30 days of
2 receipt of the Plaintiffs' Statement of Position pursuant to the preceding Paragraph. The motion
3 shall contain a written statement of Defendant's position on the matter in dispute and shall set
4 forth the relief requested and any schedule within which the dispute must be resolved for orderly
5 implementation of the Consent Decree.

6 68. Plaintiffs shall respond to Defendant's motion within the time period allowed by
7 the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted
8 by the Local Rules.

9 69. In any dispute brought under Paragraph 67, this Court shall uphold the decision of
10 the Plaintiffs, unless this Court determines, based on a review of the administrative record
11 maintained pursuant to Paragraph 66(a), that the Plaintiffs' decision was arbitrary and capricious,
12 an abuse of discretion or otherwise not in accordance with applicable law.

13 70. The invocation of dispute resolution procedures under this Section shall not, by
14 itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent
15 Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties with
16 respect to the disputed matter shall continue to accrue from the first day of noncompliance, but
17 payment shall be stayed pending resolution of the dispute as provided in Paragraph 53, above. If
18 Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid
19 as provided in Section VIII (Stipulated Penalties).

20 71. If any permitting authority, including but not limited to NDEP and/or PUCN, fails
21 to issue, renew or modify a permit or other approval required pursuant to Section XII (Permits),
22 or delays the issuance, renewal or modification of such a permit beyond the period required for
23 the permitting authority to act on the application under applicable law and/or regulation, NPC
24 may invoke the Dispute Resolution procedures set forth in this Section to request a reasonable
25 extension of the schedules affected by such failure or delay. If NPC requests Dispute Resolution
26 pursuant to this Paragraph, stipulated penalties for failure to comply with a requirement of this
27 Decree affected by the permit delay, shall not apply to the period affected by such failure or delay
28 and shall not accrue during the period of Dispute Resolution under this Paragraph, provided that:

1 (i) the delay was not caused by NPC's failure to comply with this Decree; (ii) the delay was not
2 caused by NPC's failure to submit a complete permit application that complied with the
3 applicable laws, regulations, and procedures of NDEP and/or PUCN; and, (iii) NPC continues to
4 meet the requirements of Section XII (Permits).

5 XII. PERMITS

6 72. Unless otherwise required by this Section, in any instance where otherwise
7 applicable law or this Consent Decree requires NPC to secure or modify a permit to authorize
8 construction or operation of any device, including all preconstruction, construction, and operating
9 permits required under federal, state or local law, NPC shall make such application in a timely
10 manner, timely provide additional information as requested by the permitting authority to make
11 its application complete, and otherwise cooperate with any permitting authority as necessary to
12 meet the terms of this Decree. NPC shall pay any fees necessary to secure or modify a permit as
13 required by this Paragraph.

14 73. When a permit is required, NPC shall complete and submit any application for
15 such permit to the appropriate authorities to allow sufficient time for all legally required
16 processing and review of the permit request, including requests for additional information by the
17 permitting authorities.

18 74. Incorporation of Consent Decree Requirements into Federally Enforceable Permit
19 or SIP. If not already incorporated in a federally enforceable permit (other than a Title V permit),
20 or an amendment to the SIP, NPC agrees that:

21 a. no later than six months after the commencement of operation of the
22 Igniter Installation Project, pursuant to Paragraph 15, NPC shall apply to include the requirements
23 and/or limitations enumerated in that Paragraph into either a federally enforceable permit (other
24 than a Title V permit) or an amendment to the SIP;

25 b. no later than six months after the commencement of operation of the
26 Baghouses, pursuant to Paragraph 16, NPC shall apply to include the requirements and/or
27 limitations enumerated in that Paragraph into either a federally enforceable permit (other than a
28 Title V permit) or an amendment to the SIP; and

1 c. no later than one year after the Effective Date of this Decree, NPC shall
2 apply to include the requirements and/or limitations of Paragraph 23 (SO2 Limitations and
3 Operating Permit Modification) into either a federally enforceable permit (other than a Title V
4 permit) or an amendment to the SIP.

5 d. NPC shall provide EPA with a copy of each permit application required by
6 this Paragraph, pursuant to Section XVI (Notices), as well as a copy of any permit proposed as a
7 result of such application.

8 e. NDEP agrees that any application submitted to it by NPC under this
9 Paragraph shall be reviewed in accordance with applicable laws and regulations.

10 75. Mechanism for Title V Incorporation. The Parties agree that the incorporation of
11 the requirements of this Consent Decree into the Operating Permit shall be in accordance with
12 state Title V rules, including applicable administrative amendment provisions of such rules.

13 76. PUCN Approval. No later than 30 days after the Effective Date of this Consent
14 Decree NPC shall submit a complete application, pursuant to all applicable rules and law, to
15 PUCN for approval for the inclusion of the Igniter Installation Project, required by Paragraph 15,
16 and the installation and operation of Baghouses, required by Paragraph 16, into its Integrated
17 Resource Plan.

18 77. Notwithstanding the reference to the Title V Permit in this Decree, the
19 enforcement of the permit shall be in accordance with its own terms and Act. The Title V Permit
20 shall not be enforceable under this Consent Decree, although any term or limit established by or
21 under this Consent Decree shall be enforceable under this Consent Decree regardless of whether
22 such term has or will become part of a Title V permit, subject to the terms of Section XX
23 (Termination as to Completed Tasks).

24 XIII. INFORMATION COLLECTION AND RETENTION

25 78. The United States and/or the State of Nevada and its representatives, including
26 attorneys, contractors, and consultants, shall have the right of entry into the Facility, at all
27 reasonable times, upon presentation of credentials, to:
28

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States and/or State of Nevada in accordance with the terms of this Consent Decree;
- c. obtain documentary evidence, including photographs, emission sampling, and similar data; and
- d. assess Defendant's compliance with this Consent Decree.

79. Defendant shall retain, and shall instruct its contractors and agents to preserve, copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession, or that come into its or its contractors' or agents' possession, and that relate to Defendant's performance of its obligations under this Consent Decree. Such documents, records, or other information shall be retained for a minimum of five years from the date the document, record, or other information was created or received by the Defendant. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, the United States or the State of Nevada may request copies of any documents, records, or other information required to be maintained under this Paragraph.

80. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph, and, upon a request by the United States made within 75 days after the United States' receipt of NPC's notice pursuant to this Paragraph, NPC shall deliver any such documents, records, or other information to EPA. NPC may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If NPC asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by NPC. However, no documents, records, or other information created or

1 generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of
2 privilege.

3 81. NPC may also assert that information required to be provided under this Section is
4 protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any
5 information that NPC seeks to protect as CBI, NPC shall follow the procedures set forth in 40
6 C.F.R. Part 2.

7 82. This Consent Decree in no way limits or affects any right of entry and inspection,
8 or any right to obtain information, held by the United States or the State of Nevada pursuant to
9 applicable federal or State laws, regulations, or permits, nor does it limit or affect any duty or
10 obligation of NPC to maintain documents, records, or other information imposed by applicable
11 federal or State laws, regulations, or permits.

12 XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

13 83. This Consent Decree resolves the civil claims of the United States and NDEP for
14 the violations alleged in the Complaint filed in this action through the date of lodging or alleged
15 in the following Notices: Docket Nos. R9-06-10 (EPA); 1862 through 1907 (NDEP); and 1942
16 through 1951 (NDEP).

17 84. The United States and State of Nevada reserve all legal and equitable remedies
18 available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph
19 83. This Consent Decree shall not be construed to limit the rights of the United States and/or the
20 State of Nevada to obtain penalties or injunctive relief under the Act or implementing regulations,
21 or under other federal or State laws, regulations, or permit conditions, except as expressly
22 specified in Paragraph 83. The United States and the State of Nevada further reserve all legal and
23 equitable remedies to address any imminent and substantial endangerment to the public health or
24 welfare or the environment arising at, or posed by, the Facility.

25 85. This Consent Decree is not a permit, or a modification of any permit, under any
26 federal, State, or local laws or regulations. NPC is responsible for achieving and maintaining
27 compliance with all applicable federal, State, and local laws, regulations, and permits; and NPC's
28 compliance with this Consent Decree shall be no defense to any action commenced pursuant to

1 any such laws, regulations, or permits. The United States and State of Nevada do not, by their
2 consent to the entry of this Consent Decree, assert in any manner that NPC's compliance with any
3 aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. §§
4 7401 - 7671q, or with any other provisions of federal, State, or local laws, regulations, or permits.

5 86. This Consent Decree does not limit or affect the rights of the Parties against any
6 third party, not a party to this Consent Decree, nor does it limit the rights of any third party, not a
7 party to this Consent Decree, against NPC, except as otherwise provided by law.

8 87. This Consent Decree shall not be construed to create rights in, or grant any cause
9 of action to, any third party not a party to this Consent Decree.

10 XV. COSTS

11 88. The Parties shall bear their own costs of this action, including attorneys' fees,
12 except that the United States and/or the State of Nevada shall be entitled to collect the costs
13 (including attorneys' fees) incurred in any action necessary to collect any portion of the civil
14 penalty or any Stipulated Penalties due but not paid by NPC.

15 XVI. NOTICES

16 89. Unless otherwise specified herein, whenever notifications, submissions, or
17 communications are required by this Consent Decree, they shall be made in writing and addressed
18 as follows:

19 To the United States:

20 Chief, Environmental Enforcement Section
21 Environment and Natural Resources Division
22 U.S. Department of Justice
23 Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-06982

24 and

25 Chief, Environmental Enforcement Section
26 Attn: DOJ # 90-5-2-1-08653 (Boer)
27 United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105

28 and

1 Allan Zabel, ORC-2
2 U.S. Environmental Protection Agency, Region IX
3 75 Hawthorne Street
4 San Francisco, California 94105

4 To EPA:

5 Director, Air Division (AIR-1)
6 Attn: Steve Frey
7 U.S. Environmental Protection Agency, Region IX
8 75 Hawthorne Street
9 San Francisco, California 94105

8 and

9 Allan Zabel, ORC-2
10 U.S. Environmental Protection Agency, Region IX
11 75 Hawthorne Street
12 San Francisco, California 94105

11 To State of Nevada:

12 Mike Elges
13 Chief, Bureau of Air Pollution Control
14 Nevada Division of Environmental Protection
15 901 S. Stewart Street, Suite 4001
16 Carson City, NV 89701

15 and

16 William Frey
17 Senior Deputy Attorney General
18 Nevada Department of Justice
19 100 North Carson Street
20 Carson City, NV 89701

19 To NDEP:

20 Mike Elges
21 Chief, Bureau of Air Pollution Control
22 Nevada Division of Environmental Protection
23 901 S. Stewart Street, Suite 4001
24 Carson City, NV 89701

24 To Defendant:

25 Josh M. Reid
26 Parsons Behle & Latimer
27 201 S. Main Street, Suite 1800
28 Salt Lake City, Utah 84121

28 and

1 William M. Clark
2 Generation Executive and Responsible Official
3 Nevada Power Company
4 6226 West Sahara Avenue
5 Las Vegas, NV 89151

6 and

7 Starla S. Lacy
8 Director, Environmental Services
9 Nevada Power Company
10 6226 West Sahara Avenue
11 Las Vegas, NV 89151

12 90. All notifications, communications, or submissions made pursuant to this Section
13 shall be sent by overnight mail or by certified or registered mail, return receipt requested. All
14 notifications, communications, and transmissions sent by overnight, certified or registered mail
15 shall be deemed submitted on the date they are postmarked.

16 91. Any Party may change either the notice recipient or the address for providing
17 notices to it by serving all other Parties with a notice, pursuant to this Section, setting forth such
18 new notice recipient or address.

19 XVII. EFFECTIVE DATE

20 92. The Effective Date of this Consent Decree shall be the date upon which this
21 Consent Decree is entered by the Court.

22 XVIII. RETENTION OF JURISDICTION

23 93. The Court shall retain jurisdiction over this case until termination of this Consent
24 Decree, for the purpose of resolving disputes arising under this Decree or entering orders
25 modifying this Decree, pursuant to Sections XI (Dispute Resolution) and XIX (Modification), or
26 effectuating or enforcing compliance with the terms of this Decree.

27 XIX. MODIFICATION

28 94. The terms of this Consent Decree or its appendices contains the entire agreement
of the parties and may be modified only by a subsequent written agreement signed by all the
Parties. Where the modification constitutes a material change to any term of this Decree, it shall
be effective only upon approval by the Court.

1 XX. TERMINATION AS TO COMPLETED TASKS

2 95. As soon as NPC completes any construction required by this Decree, or completes
3 any requirement that will not recur, NPC may seek termination of that portion of the Decree that
4 dictated such requirement.

5 96. Following receipt by the Plaintiffs of NPC's Request for Termination, the Parties
6 shall confer informally concerning the Request and any disagreement that the Parties may have as
7 to whether NPC has satisfactorily complied with the requirements for termination of the requested
8 portion of this Consent Decree. The Plaintiffs shall determine, and notify NPC, of any
9 disagreement as to whether NPC has satisfactorily complied with the requirements for
10 termination as requested pursuant to this Section, no later than 45 days after the NPC's request is
11 received by the Plaintiffs. If the United States and the State of Nevada agree that NPC has met
12 the requirements of the portion of the Decree, the Parties shall submit, for the Court's approval, a
13 joint stipulation terminating the relevant portion of the Decree.

14 97. If the United States and State of Nevada do not agree that the requested portion of
15 the Decree may be terminated, NPC may invoke Dispute Resolution under Section XI (Dispute
16 Resolution) of this Decree.

17 XXI. PUBLIC PARTICIPATION

18 98. This Consent Decree shall be lodged with the Court for a period of not less than 30
19 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States
20 reserves the right to withdraw or withhold its consent if the comments regarding the Consent
21 Decree disclose facts or considerations indicating that the Consent Decree is inappropriate,
22 improper, or inadequate. Defendant consents to entry of this Consent Decree without further
23 notice.

24 XXII. SIGNATORIES/SERVICE

25 99. Each undersigned representative of the Parties certifies that he or she is fully
26 authorized to enter into the terms and conditions of this Consent Decree and to execute and
27 legally bind the Party he or she represents to this document.

100. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

101. NPC agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States and the State of Nevada have notified NPC in writing that they no longer support entry of the Decree.

102. NPC agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIII. INTEGRATION

103. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXIV. FINAL JUDGMENT

104. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State of Nevada, and NPC. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58. This Consent Decree serves as the final adjudication of claims raised by the NDEP and EPA in paragraphs 4 and 5.

XXV. APPENDICES

105. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A, regarding contracts between NPC, its parent or affiliated corporations, and third party contractors; and

1 Appendix B, which is entitled “Environmental Compliance Plan for Nevada Power
2 Company’s Reid Gardner Generating Station in Moapa, Nevada.”

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ORDER

IT IS SO ORDERED:

United States District Judge
District of Nevada

DATED: _____

1 **FOR PLAINTIFF UNITED STATES OF AMERICA:**

2
3 Dated: 3/2/02

MATTHEW J. MCKEOWN
Acting Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice

4
5
6
7 Dated: 3/12/07

TOM J. BOER
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105
Telephone: (415) 744-6471

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1 **FOR PLAINTIFF UNITED STATES OF AMERICA:**
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6 Dated: March 5, 2007

~~GRANTA NAKAYAMA~~
Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Mail Code 2201A
Washington, D.C. 20460

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12
13 OF COUNSEL:

14 ANDREW C. HANSON
15 Attorney Advisor
16 U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460
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1 **FOR PLAINTIFF UNITED STATES OF AMERICA:**

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Dated: _____

GRANTA NAKAYAMA
Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Mail Code 2201A
Washington, D.C. 20460

Dated: 06 MARCH 2007

WAYNE NASTRI
Regional Administrator
U.S. Environmental Protection
Agency, Region 9
San Francisco, CA

OF COUNSEL:

ALLAN ZABEL
Senior Counsel
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

1 FOR PLAINTIFF NEVADA DEPARTMENT OF ENVIRONMENTAL PROTECTION:
2

3 Dated: 3/1/07
4

5 LEO M. DROZDOFF
6 Administrator
7 Nevada Department of Environmental
8 Protection
9 901 S. Stewart Street, Suite 4001
10 Carson City, Nevada 89701
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1 **FOR DEFENDANT NEVADA POWER COMPANY:**

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3 Dated: 2-15-07

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WALTER M. HIGGINS, III
Chairman of the Board, President and C.E.O.
Sierra Pacific Resources
6100 Neil Road
Reno, NV 89511

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1 **FOR DEFENDANT NEVADA POWER COMPANY:**

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3 Dated:

2/28/07

DONALD L. SHALMY
President, Nevada Power Company
6226 West Sahara Avenue
Las Vegas, Nevada 89146

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APPENDIX A

The following provision shall be included in any contract between NPC and any third party contractor covering any on-site installation, construction, rebuilding or maintenance work required under this Consent Decree:

Contractor acknowledges that it has received a copy of the Consent Decree in United States of America, et al., v. Nevada Power Company, Civil No. _____, and understands that its work under this contract is undertaken pursuant to the provisions of that Consent Decree.

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APPENDIX B

ENVIRONMENTAL COMPLIANCE PLAN